

The opinion is not binding precedent of the Board.

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Paper 95

Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
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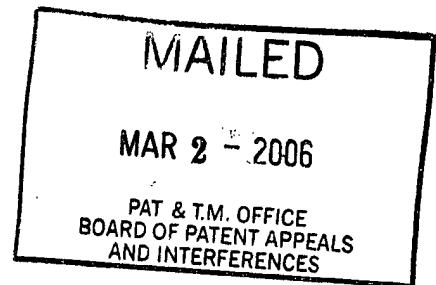
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ECKHARD BERNARDY
Junior party,
Application 09/035,936

v.

ROBERT A. POWELL
Senior party,
U.S. Patent 5,875,700



Patent Interference No. 104,671

Before: McKELVEY, Senior Administrative Patent Judge, and SCHAFFER and TORCZON,
Administrative Patent Judges

Judgment - Merits - Bd.R. 127

1 An earlier panel decision awarded judgment on priority against Bernardy. A judgment has
2 been entered in a civil action filed under 35 U.S.C. § 146 against Powell. The judgment held:

3 Plaintiff Bernardy is the true, first, original and sole inventor of the
4 invention claimed in claims 1 through 4 of U.S. Patent 5,875,700 . . . and
5 claims 42-59 of U.S. Patent Application 09/035,936 (hereinafter referred to
6 as the '936 application), and is therefore entitled to priority as the inventor,
7 pursuant to Sections 146, 102(f), and 102(g)(1) & (2) of the Patent Act, Title
8 35, United States Code.

1 A copy of the district court judgment is attached. In order to implement the judgment of the district
2 court we vacate the prior panel judgment and enter judgment against Powell.

3 **Order**

4 It is

5 ORDERED that the judgment on priority entered June 30, 2003, (Paper 70) is vacated;

6 FURTHER ORDERED that judgment on priority as to the subject matter of Counts 1 and
7 2 (Paper 1, p. 5-6), is awarded against the senior party, ROBERT A. POWELL;

8 FURTHER ORDERED that senior party, ROBERT A. POWELL, is not entitled to a patent
9 containing claims 1-4 (corresponding to Counts 1 and 2) of U.S. Patent 5,875,700;

10 FURTHER ORDERED that a copy of this judgment be made of record in the file of
11 U.S. Patent 5,875,700 and 09/035,936; and

12 FURTHER ORDERED that if there is any settlement agreement which has not been
13 filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 41.205.

/Fred E. McKelvey/)
FRED E. McKELVEY)
Senior Administrative Patent Judge)
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/Richard E. Schafer/) BOARD OF PATENT
RICHARD E. SCHAFER)
Administrative Patent Judge)
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/Richard Torczon/)
RICHARD TORCZON)
Administrative Patent Judge)

cc (Fed Ex):

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3 THE HONORABLE ROBERT J. BRYAN
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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE WESTERN DISTRICT OF WASHINGTON
14 AT TACOMA
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17 ECKHARD BERNARDY,

18 Plaintiff,

19 -v.-

20 No. C04-5604 RJB

21 ROBERT A. POWELL,

22 CONSENT JUDGMENT

23 Defendants.

24 Plaintiff, Eckhard Bernardy, filed this civil action against Defendant Robert A.
25 Powell pursuant to 35 U.S.C. § 146, regarding claims 1 through 4 of U.S. Patent
16 5,875,700 (hereinafter referred to as the '700 patent) and claims 42-59 of U.S. Patent
17 Application 09/035,936 (hereinafter referred to as the '936 application), following a final
18 decision by the Board of Patent Appeals and Interferences granting priority to
19 Defendant. The Complaint alleged that Plaintiff was the sole, true inventor of the
20 subject matter described by claims 1-4 of U.S. patent '700 and claims 42-59 of U.S.
21 patent application '936; that the '700 patent was invalid; and that Plaintiff was entitled to
22 equitable relief of restitution, accounting, and disgorgement.
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25 The parties stipulate to the entry of this Judgment in resolution of this suit and
26 interference.
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29 CONSENT JUDGMENT-1



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3 This Court now being fully advised in the premises does now Order, Adjudge and
4 Decree as follows:

5 1. This Court has jurisdiction over the parties under 28 U.S.C. §§1338,
6 1651, 2201, 2202, and as an action arising under laws of the United States, including 35
7 U.S.C. § 146 and 37 C.F.R. § 1.303-4, and venue over the parties under 28 U.S.C.
8 §1391.

9 2. Plaintiff Bernardy is the true, first, original and sole inventor of the
10 invention claimed in claims 1 through 4 of U.S. Patent 5,875,700 (hereinafter referred to
11 as the '700 patent) and claims 42-59 of U.S. Patent Application 09/035,936 (hereinafter
12 referred to as the '936 application), and is therefore entitled to priority as the inventor,
13 pursuant to Sections 146, 102(f), and 102(g)(1) & (2) of the Patent Act, Title 35, United
14 States Code.

15 3. That the '700 patent is invalid under 35 U.S.C. § 102(f) as derived from
16 the Bernardy invention described in the '936 application.

17 4. That Defendant Powell, his agents, employees, successors, assigns and
18 all those in privity with said Defendant or acting on his behalf or under his control are
19 permanently enjoined from directly or indirectly making, , selling, or causing to be sold
20 apparatus or devices embodying the invention claimed in claims 1 through 4 of the '700
21 patent or claims 42-59 of the '936 application.

22 5. That Defendant Powell will execute an assignment of all right and title to
23 Canadian Patent Application CA 2209054 titled "Monocoque Pruning, Mulching and
24 Cutting Blade," and any patents issuing therefrom, as well as executing any papers
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3 needed to be filed with the Canadian Intellectual Property Office to make such
4 assignment effective.

5 6. This Court shall retain jurisdiction and venue over the parties with regard
6 to the Settlement Agreement which the parties have entered.

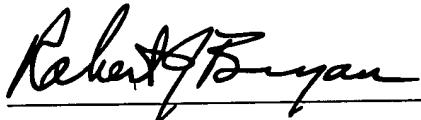
7 7. All other parties and claims are dismissed with prejudice.

8 8. Each party shall bear its own costs and attorney's fees.

9 10. 9. An original copy of this judgment and order will be filed with the Director of
11 the Patent and Trademark Office.

12 SO ORDERED AND ADJUDGED:

13 14. DATED this 7th day of November, 2005.

15 16. 
17 ROBERT J. BRYAN
United States District Judge

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